



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-093

Dear Ms. Briggs:

You have asked this office whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31315.

The City of Houston (the "city") received a request for the complete police report on a robbery. You submitted a copy of that report to this office for review. The city has already released to the requestor the "public release portion" of the report. You contend, however, that the remainder of the report is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

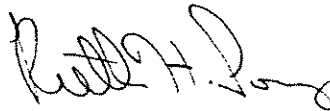
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The suspect in the robbery is on trial for capital murder in connection with another incident. You submitted to this office an affidavit from the prosecutor asking that the information in the report at issue be withheld from public disclosure because evidence about the robbery may be introduced as evidence in the defendant's capital murder trial. We agree that you have demonstrated the applicability of section 552.103(a) to the report.

However, once the information in the report at issue is disclosed to the defendant through the discovery process or otherwise, the non-confidential information in the report may not be withheld from disclosure. Once information has been released to the

opposing party in litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The applicability of section 552.103(a) also ends once the criminal litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 31315

Enclosures: Submitted documents

cc: Mr. William R. Anderson
Havard & Associates, Inc.
P.O. Box 7444
Houston, Texas 77248
(w/o enclosures)